

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

BRENDAN WELCH,

Plaintiff,

**4:23CV3186**

vs.

ERIC L. BYRD, RICHARD S. HOLLOWAY,  
DAVID E. WHITESIDES, and W. S.  
TYSINGER,

Defendants.

**MEMORANDUM AND ORDER**

Plaintiff Brendan Welch, a non-prisoner, filed a Motion for the issuance of subpoenas (the “Motion for Subpoenas”), [Filing No. 6](#), a motion seeking “free copies” of the Complaint in the instant matter as well as in case number 4:23-CV-3157 (addressed in a separate order)<sup>1</sup> which this Court construes as a motion for copies and a motion for leave to amend his Complaint (the “Motion for Copies and Motion to Amend”), [Filing No. 7](#), several affidavits in support of his request for free copies, [Filing No. 8](#) and [Filing No. 9](#), and a motion to stay the case (the “Motion for Stay”), [Filing No. 10](#). For the reasons set forth below the Court denies the Motion for Subpoenas without prejudice as premature, denies the Motion for Stay, and grants the Motion for Copies and Motion to Amend.

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<sup>1</sup> See *Welch v. Stecker*, Case No. 4:23-cv-3157, [Filing No. 12](#).

Rule 15 of the Federal Rules of Civil Procedure provides “[t]he court should freely give leave [to amend] when justice so requires.” [Fed. R. Civ. P. 15\(a\)\(2\)](#). Plaintiff’s Motion for Copies and to Amend, [Filing No. 7](#), is granted to the extent Plaintiff seeks leave to amend his Complaint.

The statutory right to proceed in forma pauperis does not include the right to receive copies of documents without payment. [28 U.S.C. § 1915](#); see also [Haymes v. Smith](#), 73 F.R.D. 572, 574 (W.D.N.Y.1976) (“The generally recognized rule is that a court may not authorize the commitment of federal funds to underwrite the necessary expenditures of an indigent civil litigant’s action.”) (citing [Tyler v. Lark](#), 472 F.2d 1077, 1078 (8th Cir. 1973)). If Plaintiff requires copies of court documents, he should contact the clerk’s office to determine the proper method of requesting and paying for copies.

However, the Court shall grant Plaintiff’s Motion for Copies in this case only so he may comply with this Order granting him leave to amend his Complaint.

Plaintiff has also filed a Motion for Subpoenas, seeking production of documents, recordings, and other written information relating to his claims from defendants. [Filing No. 6](#). Plaintiff’s motion is premature as, although the Court granted Plaintiff leave to proceed in forma pauperis, see [Filing No. 5](#), the Court has not yet performed an initial review of the Complaint. See [Jackson v. Herrington](#), 393 F. App’x 348, 353 (6th Cir. 2010) (“Rule 4 requires plaintiffs to serve each defendant with a summons and a copy of the complaint. But district courts cannot issue summonses in *in forma pauperis* prisoner cases until after screening the complaint for frivolousness and other defects under [28 U.S.C. §§ 1915\(e\)](#) and [28 U.S.C. § 1915A\(b\)](#).”) (citation omitted)); [Strawder v. Rollins](#), No. 8:18CV47, 2018 WL 1136898, at \*1 (D. Neb. Mar. 1, 2018) (dismissing motion for

discovery without prejudice subject to refiling as premature as Plaintiff had not yet paid his initial partial filing fee and because initial review of Plaintiff's Complaint to determine whether summary dismissal is appropriate under [28 U.S.C. §§ 1915\(e\)](#) had not yet occurred). As no discovery may take place until after an initial review is performed and the Court determines this matter may proceed to service of process, the Motion for Subpoenas shall be denied without prejudice.

Finally, Plaintiff seeks a stay of this case "if summons ha[ve] been issued." [Filing No. 10](#). As the Court has not yet performed an initial review to determine whether this matter may proceed to service of process, summons have not been issued, rendering the relief requested in the Motion for Stay unnecessary. For this reason, the Motion to Stay, [Filing No. 10](#), is denied.

IT IS THEREFORE ORDERED that:

1. To the extent Plaintiff seeks copies of his Complaint in this case, the Motion for Copies and Motion to Amend, [Filing No. 7](#), is granted. **Plaintiff is warned that this is a one-time courtesy and all further requests for copies in this case must be directed to the Clerk's Office.**
2. The Clerk's Office is instructed to provide Plaintiff a copy of the Complaint at [Filing No. 1](#).
3. To the extent Plaintiff seeks leave to amend his Complaint in the Motion for Copies and Motion to Amend, [Filing No. 7](#), such leave is also granted. Plaintiff now has through and until **August 2, 2024**, to file his amended complaint. If Plaintiff fails to file an amended complaint or otherwise respond, the Court shall perform an initial review of the operative complaint at [Filing No. 1](#).

4. Plaintiff's Motion for Subpoenas, [Filing No. 6](#), is denied as premature.
5. Plaintiff's Motion for Stay, [Filing No. 10](#), is denied as the relief requested is not necessary.
6. If Plaintiff requires any additional time to comply with this Order, he must file a motion seeking additional time on or before the expiration of the July 31, 2024, deadline to amend his complaint.
7. The Clerk's Office is directed to set a pro se case management deadline in this case using the following text: **August 2, 2024**: Check for amended complaint.

Dated this 3rd day of July, 2024.

BY THE COURT:



Joseph F. Bataillon  
Senior United States District Court